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by

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Guilt, Moral Anxiety, and Moral Staining

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Abstract

Guilt, Moral Anxiety, and Moral Staining

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This is a work of moral psychology in the course of which is presented a theory on the nature of guilt. The point of departure is a psychological phenomenon that I call “scrupulousness.” Scrupulousness is present when someone is in doubt about the morality of a minor past action. He or she is obsessively driven to determine whether his act was right or wrong. The result for the individual is vexing preoccupation in a cycle of internal casuistry. I explain this unhappy phenomenon as the result of anxiety over guilt understood as moral staining. A moral stain is a persistent residue adhering to the self created by a past wrongful action. To better explain moral stains, I borrow Christine Korsgaard’s theory of personal identity as constituted by one’s choices. With the aid of Korsgaard’s theory, I then consider how a belief in guilt as moral staining accounts for the worry of the scrupulous person.

The Postscript of the Report first considers whether scrupulousness is justified by the explanation I have furnished. I answer this question in the negative. I also consider how anticipation of scrupulous worry could drive a person away from morally ambiguous situations, sometimes preventing him from taking the correct course of action in a form

of “moral cowardice.” The Postscript secondly explains the significance of investigating scrupulousness and moral staining for philosophers. I argue that moral staining captures important aspects of the phenomenology of guilt and that it correctly accounts for the reality of guilt as more than a mere psychological state or feeling. To exhibit these strengths of the moral staining view, I compare and criticize Herbert Morris’ prominent model of guilt as consisting in the severance of valued relationships.

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I. Introduction

This is a paper in moral psychology in the course of which a theory of guilt is presented. The psychological topic is what I call “scrupulousness,” a phenomenon of doubt and worry about the morality of seemingly insignificant past actions.¹ After giving an example of a scrupulous person, I contend that her worries are driven by anxiety over moral staining, i.e., anxiety that a possibly wrongful action has left a persistent residue on the self. To give content to the idea of a moral stain, I rely on Korsgaard’s theory of practical identity developed in her recent book *Self-Constitution: Agency, Identity, and Integrity*. With Korsgaard’s machinery in hand, I analyze how concern with moral staining could drive scrupulous worry.

The Postscript looks primarily at two topics. (1) The value of scrupulousness as a character trait, particularly whether it is justified by my explanation of it; and (2) Why philosophers should be interested in an account of scrupulousness. With respect to the first topic, I render a negative verdict: while scrupulousness does have some positive effects, it is not to be recommended as a character trait. Addressing the second topic, I argue that scrupulousness is of philosophical interest because its explanation highlights a neglected aspect of guilt. Not only does the moral-staining view capture important parts of the phenomenology of guilt, but it also has advantages over a prominent alternative advocated by the late Herbert Morris, that of guilt as consisting in the rupture of valued relationships

¹ By this I mean doubt and subjective uncertainty as to whether the action was in fact right or wrong.

A. A Scrupulous Student

Imagine a high school student sitting down for a geography test. Before the bell rings, she looks over the map of the world one last time before cramming the book back into her open backpack. During the test, while puzzling about the name of that country which sits below Kazakhstan and west of Uzbekistan, she idly glances downward. To her chagrin, the book is sitting half open and she spies the name of the country, “Kyrgyzstan.” “What should I do?” she wonders. “The name was on the tip of my tongue; I was just about to remember.” So she decides to write “Kyrgyzstan.”

But then she pauses. “Maybe the answer wouldn’t have come to me. The right thing to do is leave the question blank.” “But I studied so much,” she retorts, “I’m sure I would’ve gotten the right answer on my own eventually. Why should I self-handicap like that?” So she scribbles “Kyrgyzstan” in the blank and finishes the exam. Still, she can’t help rehearsing these arguments, both when she gets home that night and when her exam is returned the next day with a shiny red A in the margin. She is worried—worried that what she did was wrong. She asks herself, “Was what I did cheating? Do I need to confess, or would that be absurd?” Attempting to answer her question, she might reason, “Well, I didn’t look at the book on purpose and I would’ve got the answer anyway.” However, the next moment she says to herself, “It doesn’t matter if you did it on purpose or not; you had an unfair advantage. Besides, you can’t be sure whether you would’ve remembered that name.” Suppose she carries on fretting like this all week and that six months later she has to shake the thought out of her head to avoid bringing on another

round of casuistry. All that fuss over a (perhaps innocent) answer on a high school geography exam!

I will use the word “scrupulousness” to identify the student’s psychological state of retrospective anxiety and doubt. Although the words “scruple” and “scrupulous” express other traits that I do not intend²—e.g., meticulousness, conscientiousness, and adherence to a peculiarly strict moral code—they also communicate doubt and anxiety in moral matters. The OED defines “scrupulous”: “Troubled with doubts or scruples of conscience; over-nice or meticulous in matters of right and wrong.” It defines “scruple” as “[a] thought or circumstance that troubles the mind or conscience; a doubt, uncertainty or hesitation in regard to right and wrong, duty, propriety, etc.; esp. one which is regarded as over-refined or over-nice, or which causes a person to hesitate where others would be bolder to act.” In sum, I adopt the word “scrupulous” because it suggests traits I wish to discuss, namely, the student’s *anxiety and doubt about the morality of her minor past actions*. Whether or not “scrupulous” ordinarily denotes some other putative psychological category, such is not the business of the paper.

² For example, the fifth definition of “scrupulous” in the OED reads: “Minutely exact or careful (in non-moral matters); strictly attentive even to the smallest details; characterized by punctilious exactness.” There is also a sense in which “scrupulous” expresses mere strictness or a high degree of care in moral matters. The OED includes this use of the word as well: “Careful to follow the dictates of conscience; giving heed to the scruples of conscience so as to avoid doing what is wrong; strict in matters of right and wrong.”

B. A Proposed Explanation

My immediate goal in this paper is to explain scrupulousness.³ Specifically, why is it that the possibility of a small ethical infringement can occasion so much anxiety after the act? What is it about the uncertainty surrounding a single possible transgression, however so slight, that can cause people like the student to second guess themselves and question whether what they did was right long after the event has passed?

I propose that scrupulousness derives from anxiety about the effect of immoral actions on one's self. The idea is that unethical deeds leave one changed for the worse. Obviously, you bear a specific relationship to a past misdeed: you are the person who at time t did immoral action x . However, I have in mind something different. To wit, there is a further, non-relational fact about your present state: you are somehow *stained* by the blameworthy action. On my model, scrupulousness is a manifestation of anxiety about the ethical staining of one's self. The scrupulous person is unsure whether what he did was wrong, and in his uncertainty, he fears the worst, fears that acting unethically has tainted him.

In the early going, I want to distinguish my notion of staining from a more familiar idea prominent in the virtue ethics tradition. The staining that is of concern to the scrupulous person is not the degradation of character that the virtue ethicist believes to proceed from bad actions. The worry is not that bad actions will turn into bad habits of thought, feeling, and action but that the bad action itself has simply left a black mark. Our

³ Note that I do not say my aim is to “justify scrupulousness.” Indeed, I only take up this question briefly in the Conclusion, where I render a negative verdict as to its warrant and merit.

student (let's call her Emily) is plainly a young woman of good character in the virtue ethical sense; after all, the vicious person is neither so attentive to ethical matters nor as self-critical when it comes to her own peccadilloes. Whichever way she chooses to respond to her worries, Emily is not about to become a serial cheater or routine liar. As such, her concern is not with the effects that cheating would have on her future dispositions but on the effect that the possible⁴ act of cheating may have had on her self. She worries about the propriety of her actions because she worries that—although she may go on to live a virtuous life, disdaining dishonesty of every sort—she will henceforth be tainted by the act of cheating.

If moral staining is not to be explained in terms of the development of a vicious character, then how should we understand it? According to the proposed theory, immoral actions somehow change a person for the worse. Accordingly, there must be something about the person going forward that is altered, something that corresponds to the stain. However, if we have ruled out the development of bad psychological traits as the change involved, then it is hard to identify a suitable candidate. Once changes in a person's thoughts, feelings, and habits are set aside, what it means for a person to be stained by an unethical action is difficult to grasp.

Previously, I described scrupulousness as concern for the “ethical staining of one's self.” Given my disclaimer of a psychological interpretation of moral staining, “self” cannot just be a byword for a person's personality or his character in the sense of

⁴ It's important to recognize that Emily is truly in doubt as to whether her action was right or wrong. Thus, when I use the word “possible,” I mean to say that it is uncertain, at least to Emily, whether her actions were right or wrong. Moreover, I myself take it that it is not obvious whether what Emily did was right or wrong.

the virtue ethicist. Instead, “self” is another way to refer to the person.⁵ When I talk of the self being stained by a wrongful action, I mean to say that a change has occurred in the person’s properties. What properties do I mean, however?

When a person commits an immoral action, he is still the same person. For example, if Judge Learned Hand takes a bribe from an attorney, he is still Learned Hand and would still have been Learned Hand had he not taken the bribe. A moral stain, therefore, is not an essential property—i.e., one that makes a person who he is and keeps him the same over time. The psychological option presents itself, but it has already been excluded from the discussion: a moral stain is not a change to a person’s psychological properties (e.g., his personality, his virtues and vices). Likewise, we earlier barred the possibility that a moral stain is a merely relational property, i.e., the fact that at time t , x did immoral action y .

In positive terms, a moral stain is a non-physical property that is immanent without being essential. It is something very close to you; in fact, it is on you or of you, but yet, nonetheless, you would still be you without it. It can be compared to a change in a person’s physical properties. When a child (Tim) falls off a swingset, cuts his chin, and the wound is not properly stitched and dressed, then his properties are altered, viz., he is now scarred. No one would say that he is now a different person, but something about him is notwithstanding different. And it is a more significant difference than the change in Tim’s properties that comes from having sat on the passenger side rather than the

⁵ As for what a person is or what makes her the same over time, I intend to be metaphysically agnostic.

driver side of the school bus on the morning of the twenty-fourth of September. It is part of his makeup in a way that these innumerable relational properties are not.

Perhaps this example will better make clear what I have in mind. Imagine the famous Ship of Theseus. It has once been to the breakers, but you have managed to assemble all of its old boards and planks and have reconstructed it. Arguably at least, you can now truly say, “Voila, the Ship of Theseus.” Now suppose that you decide the Ship of Theseus would make a better tourist attraction if it were painted purple. After slapping on a new coat of paint, you can still say, “Voila, the Ship of Theseus.” The ship is still the same ship, but some of its qualities have changed. In the same manner, moral staining consists in a change in the contingent but immanent properties of the self, a spot of an ill moral hue on the substance.

II. Korsgaard and Practical Identity

The above remains long on metaphor and short on explanation. To flesh out the imagery, we can use Christine Korsgaard's work on practical identity to explain how bad actions taint the self. However, employing Korsgaard requires some exegetical labor. In what follows, I summarize Korsgaard's thinking about practical identity as presented in *Self-Constitution: Agency, Identity, and Integrity*.

In brief, practical identity is the same thing as personal identity.⁶ That sounds simple enough, but Korsgaard also thinks that a person's practical identity is constructed by her choices. Unlike her identity as an animal or a living thing, her practical identity is up to her. She can build her personal/practical identity in this way because she is rational, which allows her to reflect on and choose the principles of her actions. Indeed, Korsgaard tells us that personal identity is composed—literally made up of—one's actions.

Korsgaard's claim that we construct our practical/personal identities by our choices relies on a notion of personhood developed from her reading of Aristotle. In her mind, "The identity of a person, of an agent, is not the same as the identity of the human animal on whom the person normally supervenes."⁷ To understand the view, recall that Aristotle divided the living world into three forms of life: the vegetative, the animal, and the rational.⁸ The vegetative life of nutrition and reproduction, which is shared by all

⁶ Indeed, Korsgaard uses the phrases "practical identity" and "personal identity" interchangeably. *See, e.g.*, CHRISTINE KORSGAARD, *SELF-CONSTITUTION: AGENCY, IDENTITY, AND INTEGRITY* 7 (2009) ("[I]n this book I will be dealing with three topics that I take to be intimately related. The topics are the nature of action, the constitution of personal or practical identity, and the normativity of the principles of practical reason.").

⁷ *Id.* at 19.

⁸ *Id.* at 127–29.

plants and animals, lies at the bottom. The intermediate animal form, characterized by “perception and sensation,” is shared by humans and the other animals.⁹ Thanks to these distinctive abilities, humans and animals possess a kind of identity (animal identity) that plants lack.¹⁰ Atop the ladder, humans participate in the life of rational activity. This form of life is the source of practical identity. Just as an animal possesses a kind of identity that a plant lacks, so do humans possess a kind of identity that animals lack. Although humans still participate in the animal and vegetative forms of life, their participation in the rational form of life allows them to construct personal or practical identities over and above their identities as animals or living things.¹¹

Rationality entails the ability to construct one’s personal identity because it means being able to choose the principles of one’s actions, à la Kant. For an animal, its instincts are its principles of action.¹² Instincts are principles because they determine how the animal will respond to the incentives that it experiences: “They are the laws of [the animal’s] causality in the sense that they determine what she does for the sake of what.”¹³ In contrast, although humans possess instincts,¹⁴ they are also capable of acting in accordance with rational principles of their own choice and devise.¹⁵ By adopting a

⁹ *Id.* at 129.

¹⁰ Korsgaard’s explanation is fuzzy. She reminds us that being in a room with an animal is different from being in a room with, say, a potted plant. The fact that a dog possesses perception and sensation means that, in addition to being a living thing (having a plant identity), it has a separate animal identity. As she puts it, when you’re in a room with a dog, the dog “is not just a substance, she’s a subject, she’s a someone.” *Id.*

¹¹ *Id.* at 128.

¹² *Id.* at 110.

¹³ *Id.*

¹⁴ *Id.* at 116.

¹⁵ *Id.* at 110.

principle, we sanction it as a law for our will in the same way that an animal's instincts are a law to it.¹⁶

The process of deliberating upon and selecting the principles of our actions is the work of self-constitution.¹⁷ Personal identity “is *constituted* by our chosen actions.”¹⁸

Note that Korsgaard uses the word “constituted” rather than “constructed.” This is because personal identity is not just the result of our actions; it is composed of our actions. Actions are the bricks of which the house of personal identity is formed.

Korsgaard goes so far as to tell us that “they [our actions] are us, because we are what we do.”¹⁹ She explains:

When you deliberately decide what sorts of effects you will bring about in the world, you are also deliberately deciding what sort of a cause you will be. And that means you are deciding who you are. So we are each faced with the task of constructing a peculiar, individual kind of identity—personal or practical identity—that the other animals lack. . . .

It is as the possessor of personal or practical identity that you are the author of your actions, and responsible for them. And yet at the same time it is in choosing your actions that you create this identity. What this means is that you constitute yourself *as* the author of your actions in the very act of choosing them.²⁰

Given this connection between freedom, action, and self-constitution, Korsgaard's theory is ripe for application to the problem of moral staining.

¹⁶ *Id.* at 116.

¹⁷ *Id.* at 19–20.

¹⁸ *Id.* at 130.

¹⁹ *Id.*

²⁰ *Id.* at 19–20.

III. Applying the Theory

Ethical staining is easy to understand if one accepts Korsgaard's practical identity theory. Our practical identities are constructed by our choices. When we choose to act unethically, we are like craftsmen inserting rotten timbers into a frame house. Our work is thus sullied in the same way that the work of a cook who pours a spot of rancid milk into the soup mars his own labors. Like the soup, the self is a work-in-progress to which many ingredients have been added. One does not become a wicked person by one wicked action, but like the soup, one nonetheless has at least one undeniably bad element composing oneself. The ethical stain that bad actions leave is just their contribution, a few shoddy nails and boards, to the ongoing process of self-construction. When we choose to do wrong, we reshape ourselves, however so little, for the worse.

Scrupulousness is anxiety about the contributions that immoral actions make to self-construction. When we act unethically, we are shaping ourselves for the worse. It is only natural that we worry. When our young student is fretting about the ethics of her exam taking, she is worried that she has altered herself in a bad way by her actions. This is not a possibility that she regards as one would regard a mere historical fact. Rather, she looks at the possibility with apprehension because it means that she may be a person partly composed by a bad action. Her misdeed then is not just a past fact—the fact that at time x she performed immoral action y —but a present reality.

The difference between regarding your immoral actions as past facts and seeing them as part of you in the present is a substantial one. The latter holds your attention and cries out for expiation in a way that the former does not. The former may be brushed

aside, treated as errors that should only be dwelled upon to the extent that reflecting on them will help you avoid making the same mistakes in the future. The latter, on the other hand, are matters of pressing concern in the present. If immoral actions leave one stained, then the platitudes about “learning from your mistakes and moving on” cannot be credited without reservation. This is because poring over one’s past misdeeds is not just idle retrospection but consists in facing what is a persistent part of oneself. Thus, to look over past blameworthy acts is not idle; at a minimum, it is needed for honest self-appraisal. Moreover, it may be important for expiation, insofar as that is possible or desirable.

The impact of bad actions on who you are goes a long way to explaining scrupulousness. Someone like our student worries about the ethics of what she did because ethical staining is a grave prospect, a prospect that both drives her to find an answer to the question, “Was what I did wrong?” and makes her afraid of the answer. When looking back on an ethically ambiguous situation, our student feels compelled both to conduct an honest, uncompromising investigation and to mount a vigorous defense of herself. This accounts for why she cannot help but keep rehashing the events of the exam along with the relevant ethical considerations. Her obsessive exercises in applied ethics are driven by a desire (grounded in anxiety over what the answer might be) to know whether or not she has stained herself. Her worried mulling bears the relief of exoneration in one hand and the pain of encountering the ethical black mark in the other. Further, her task is made all the more maddening insofar as she knows to distrust herself as one sitting as judge over her own cause. Recognizing this tangle of emotions helps

explain why she would spend so much time—even drive herself to distraction months later—thinking about such a slight ethical peccadillo, one which might not even rise to the level of a peccadillo but be completely innocent.

The above captures the gist of the notion that scrupulousness is anxiety over moral staining. I want, however, to bring out two additional ideas about ethical staining and crystallize them with the aid of Korsgaard's theory. These two ideas help explain how even the *slightest* moral wrongs can be the cause of all the nervousness and worry observed in the scrupulous person.

Firstly, if you are shaped by the choices that you make, then you are something uncomfortably precarious. According to Korsgaard, man is the only animal who has the task of creating his own form. In other words, each human being makes herself into a unique person.²¹ Your practical identity is a one-of-a-kind work of your own making. It is thus more intimately and fully yours than the deliveries of nature. Though this sounds romantic, it is also a sobering idea. Not only does it mean that you and you alone are responsible for making yourself into the person that you are, but it means that when you choose, you are working without a net. One false move and the project is marred. Outside the self you construct for yourself, there is no default state on which to fall back.²² This is

²¹ *Id.* at 129–30 (“Because he is alive in a further sense, then, a person has an identity in a further sense. He has an identity that is constituted by his choices. . . . Every person must make himself into a particular person.”).

²² Remember that, per Korsgaard, practical identity is not the same as animal identity. It is not the same as your nationality, native culture, or profession either. *See id.* at 22–25. These are only you insofar as you have chosen to act in accordance with the roles that they present. *See id.* at 23 (“If you continue to endorse the reasons the identity presents to you, and observe the obligations it imposes on you, then it’s you. . . . [Y]ou can walk out

because, per Korsgaard, your actions and your actions alone constitute your practical identity. If you make a misstep, then that misstep will be part of you.

To understand how this sense of precariousness contributes to scrupulousness, the metaphor of the tight-rope walker working without a net is both helpful and misleading. It is misleading in that, while a single ethical slip does leave a mark, it need not have catastrophic consequences for your practical identity. Korsgaard thinks that practical identity has inertia; so one immoral action does not make one an immoral person.²³ The metaphor is helpful though in that it emphasizes that there is no content apart from your choices on which to fall back. So when one does make an immoral choice, however small it may be, it raises hard questions about the sort of person you are. Just like a tight rope walker who makes a misstep, wobbles, and looks down, the person who commits a minor unethical act glimpses the fragility of his practical identity.²⁴

even on a factually grounded identity like being a certain person's child or a certain nation's citizen . . .").

²³ The word "inertia" is my term and does not appear in Korsgaard's text. Still, the proposition is evident therein. Korsgaard is at pains to tell us that self-constitution is a continuing activity, not a static state. *E.g.*, *id.* at 43. She also describes the process of self-constitution: "Constructing, creating, shaping, reshaping, maintaining, improving, in all these ways constituting this kind of identity is the everyday work of practical deliberation." *Id.* at 129. Note her use of words denoting an ongoing project, viz., "reshaping," "maintaining," and "improving." The self for Korsgaard is a work-in-progress to which each new action contributes; it is not created anew with every fresh choice. Indeed, Korsgaard compares the development of the self to the growth of an animal like a giraffe. *Id.* at 35–36. When a giraffe eats the tender green leaves from the top of the trees and incorporates the nutrients into his body, he is engaged in the process of becoming a giraffe. To be a giraffe is just to be continuously making oneself into a giraffe. Whereas the giraffe eats and metabolizes the green leaves, we construct ourselves by choosing the principles of our actions.

²⁴ Gabriele Taylor eloquently expresses a similar idea:

When feeling guilt . . . the agent sees himself as the doer of a wicked deed and so as alien to himself; he sees another self emerging. . . . In many ordinary cases of guilt, of course,

He glimpses the fragility of his practical identity in the small immoral choice because he sees the potential both for bad action and to become a bad person by repeated bad actions. The potential exists because he is a free being constituted by his own choices. Remember that people usually like to think of themselves as decently moral individuals. A person may even take pride in the fact that he is loyal or kind. However, if Korsgaard is to be believed, then he has only those things to the extent that he chooses to make himself loyal and kind. If he insensitively shouts at a clumsy coworker, then his kindness is called into question. Truly, he does not thereby cease to be a kind person. Yet, like the tight-rope walker who shudders after seeing the ground below, he perceives in his act the fact that it is only his own free choices that separate him from being a callous, wrathful person.²⁵

the particular action or omission may not be thought by the agent to be a very serious violation, or not thought to be the violation of a very serious taboo. In such a case the second self does not have much substance; its appearance is only fleeting and so is not much of a threat. . . . But if in feeling guilt the agent thinks of himself as having done something he regards as alien to himself and which yet has been brought about by him, then *there is here the danger of a split, however fleeting that danger might be. Once there is this danger then there is also the possibility that the alien self, the doer of the forbidden deed, might assume control, and so what is important to the person feeling guilt is to purge himself of that self.* . . .

GABRIELE TAYLOR, PRIDE, SHAME, AND GUILT: EMOTIONS OF SELF-ASSESSMENT 134–35 (1985) (emphasis added).

²⁵ In using words like “kind,” “loyal,” “callous,” or “wrathful,” I do not mean to renege on my earlier commitment to treating moral stains as non-psychological properties of individuals. To use these words consistently with that commitment, however, I must ask the reader to understand them not as expressing actual psychological traits (e.g., the warm feeling typical of the kind person) but as states of persons whose actions have corresponded to these traits. Thus, in this manner of speaking, the kind person is not necessarily kind in the sense that he is disposed to warm feelings and finds it easy to lend a helping hand; rather, he is a person who has done kind things and thereby, on the Korsgaardian theory, constituted himself a kind person.

This possibility is all the more keen since it lies in his own freedom. His ill-tempered²⁶ action showed him how easily he may make a wrong decision. Just as a tight-rope walker may, in a flash, make a misstep, a person may make a moral misstep all the more easily. He can do so as fast as he can will: he need only decide to let an immoral principle govern his actions. Furthermore, since his choice is free, it is surrounded with a kind of mystery. What made him choose wrong over right in this instance? If he is free (as Korsgaard understands that concept), then ultimately the answer can only be that he chose to act immorally.²⁷ This intensifies the feeling of fragility because thinking of the capriciousness of his own will emphasizes to him how precarious his self-constituted personhood is.

Catching a glimpse of the precariousness of one's practical identity is part of what explains the scrupulous person's sensitivity over minor ethical violations. To make the point concrete, we can consider our student Emily. When she is arguing with herself over the morality of her actions weeks ago on test day, she might think (supposing her internal prosecutor has gotten the advantage for the moment), "No, what I did was wrong. But, does that mean that I am a cheater? I've never done anything like that before, and I won't do it again . . . I hope . . . but there's still some bad in me that made me do that. Can I

²⁶ This choice of words is particularly unfortunate given what I have said about the difference between the development of bad character and moral stains. But see the previous footnote.

²⁷ As Kant described the mystery, "However, the rational origin of this derangement of our power of choice with regard to the manner in which it admits subordinate incentives as supreme into its maxims, i.e., the rational origin of this propensity to evil, remains inscrutable to us; for, it must itself be imputed to us, and that supreme basis of all maxims would consequently in turn require the admission of an evil maxim." IMMANUEL KANT, *RELIGION WITHIN THE BOUNDS OF BARE REASON* 48 (Werner S. Pluhar trans., Hackett Publishing, 2009) (1792).

really truthfully say that I'm an honest person, honest deep down?" For Emily, her worries about who she is "deep down" stem from a sense of the insecurity of her practical identity, an insecurity perceived in the minor transgression that she worries she has committed.

The second idea is that scrupulousness is driven by a melancholy perception of loss in the immoral action and consequent moral staining. It is melancholy because it is a harm to something irreplaceable, the damage done to which is (seemingly) irrevocable.²⁸ Put more poetically, a person who has done something immoral may feel that he has lost himself. Since the immoral action has stained him, he worries he can never be the person he had been or had aspired to become.

For an explanation of the feeling of loss, ostension will have to substitute for analysis. Consider a family heirloom such as a diary written by your great-grandmother. Suppose that you are looking through the diary and come across an interesting story. As you pick up the old book, you accidentally knock a bottle of liquid paper over on to the page. The text you were so excited about reading is now crisscrossed with white liquid.

²⁸ The qualification "seemingly" is necessary because on Korsgaard's theory, it is always possible to reshape one's practical identity. As I interpret Korsgaard, practical identity has "inertia" but is nonetheless malleable. *See supra* note 23. Thus, the idea that ethical staining involves an irrevocable loss is admittedly at odds with Korsgaard's theory. If we can reshape our practical identities by our choices, then bad actions are not a permanent part of them. That said, cleaning up one's practical identity is not a topic that Korsgaard specifically addresses. While she is clear that self-constitution is an ongoing process of both reshaping and maintaining, she does not specifically consider whether or to what extent a person may detach himself from past misdeeds. Ultimately, I will suggest that our bad actions are not a permanent part of our identity but that a theory of repentance is necessary to explain how they may be excised. I discuss this in a later section, but for now, it is sufficient to say that, even if the stain can be erased, a person may feel as if he has perpetrated an irrevocable harm.

At a moment like this, you'll probably have a sinking feeling in your stomach. It is a different feeling than the one you would experience if you spilled red wine on an expensive new coat. While the coat can be replaced, your great-grandmother's diary cannot. It is also a different feeling than you would have if in your haste you had ripped the page. Whereas the paper can be mended, the white liquid cannot be removed. In sum, blotting out the text occasions a special kind of sorrow because the words are believed to be lost forever.

Second, consider an Olympic sprinter who stumbles off the starting block at the big race. Although he is only thirty years old, he is an old man by the standards of his sport. He has been running all his life but this is his first and likely only trip to the Olympics. Growing up, he was always told what a talent he had for running, and from an early age, he himself realized what amazing potential he had as an athlete. His awareness of that potential helped fuel his ambition; he always hoped to win a medal at the Olympics in order to prove his greatness as a sprinter. When this person stumbles at the critical moment, the loss is an especially doleful one. He is grieved not only because he lost this particular race but because he feels he has lost himself. He always knew he was a great sprinter, maybe even the greatest sprinter, but the loss of his last chance at the Olympics means that his potential will never be proven or realized. In consequence, he feels that he has ruined or lost himself.

For the scrupulous person, the same feeling of loss makes even small ethical lapses take on outsized significance. This helps explain why she is so nervous about miniscule ethical violations. Though the black marks on her identity are small, they are

there permanently. If an heirloom vase is chipped, the piece can be reattached with glue, but a crack will remain. The vase can never be fully restored. Similarly, a scrupulous person sees in petty unethical actions minute cracks in her self. Just like in the case of the vase, an abiding loss has occurred, one that carries it with it the same unique flavor of melancholy observed in the cases of the diary and the sprinter.

Let's consider Emily again. Suppose that she has convinced herself *for the time being* that what she did was immoral. Instantly, she resolves never to repeat her mistake. "But, can that really take away what I have done," she frets. "Years from now, I will still be the person who cheated." "Maybe I can make up for it by giving to charity" Emily's worry here is that her bad action has left a *permanent* mark on her. Its irreversibility depresses her. She may seek solace in forgetfulness; she might think, "I wish I could stop thinking about this, but then, I'd just be hiding the truth from myself, and besides, you can never really forget something if you're trying to forget it" In the alternative, she thinks about what she could do to erase it (ponders supererogatory acts, confession, etc.). The sadness she feels is the sadness of a permanent loss. Like the sprinter who feels he has lost himself because he can never be the great sprinter he thought himself to be, Emily feels she has lost herself because of the ethical black mark on her self.

IV. Conclusion

A. Psychological Verisimilitude

I peppered the paper with snatches of the inner monologue of two imagined scrupulous persons. The reader may have doubted whether actual scrupulous people think about their actions in the way I describe. Worrying about an intangible stain on one's self does not seem like the kind of thing that non-philosophers would do. Confessedly, ordinary people have not read Christine Korsgaard and do not use the technical language of ethicists. Still, I do think that anxiety over ethical staining is an accurate description of what is going on inside the head of the scrupulous person.²⁹

Philosophical terminology may not be present, but people do feel or think of themselves as stained by their bad actions. This attitude may take different shapes in different people. Some may be driven to confess, impose austerities on themselves, or try to compensate for their bad deeds by supererogatory acts. Others may speak of feeling cheapened by what they have done. If they are already of a reflective disposition, they may experience some form of identity crisis, questioning who they are and wondering whether they can still consider themselves kind, honest, or loyal in light of their misdeed. Finally, many people adhere to religions with doctrines of sin or karma. Like the concept

²⁹ One might also object that moral staining bears no special relationship to scrupulousness. In other words, moral staining explains scrupulousness no better than it explains ordinary, non-scrupulous guilt. However, I previously identified two ways in which moral staining helps account for the distinctive focus of the scrupulous on minor ethical infringements. The first is the precariousness of one's identity as glimpsed in the moral stain. The second is the feeling of self loss associated with moral staining. Both of these examples demonstrate how even minor ethical violations can take on an outsized significance when immoral actions are understood as acts of self-constitution that leave a bad moral residue.

of moral staining, sin and karma are said to be carried by the person. The soul bears karma through its rebirths; sin is likewise attached and can only be wiped away by divine grace. We need not credit these religious doctrines to recognize that many people do explicitly conceive of their misdeeds as leaving a persistent, tainting residue on the self.

B. Repentance, Or Can Moral Stains be Extirpated

I promised a discussion of repentance. One of the reasons the scrupulous worry about ethical staining is that the stain is regarded as permanent. In my discussion of the sense of loss accompanying moral staining, I provisionally credited these beliefs and described moral stains as permanent or irrevocable. However, this is inconsistent with Korsgaard's theory. She says, "Constructing, creating, shaping, *reshaping*, maintaining, improving, in all these ways constituting this kind of identity is the everyday work of practical deliberation."³⁰ Korsgaard does not specify to what extent we can reshape our practical identities, much less consider to what extent we can excise bad actions from them. However, the word "reshape" encompasses the possibility that practical identity, over time, can be wholly reformed and bad actions extirpated. Insofar as this is Korsgaard's position, I agree—but with reservations.

My reservation is that Korsgaard's position makes it too easy to uproot past misdeeds from our practical identities. Namely, expungement of immoral actions must involve something more than a resolution, made good upon, to be better in the future. Otherwise, one cannot make sense of the human urge to pursue more purposeful forms of atonement. I have in mind confession, supererogatory acts, self-denial of the fruits of a

³⁰ KORSGAARD, *supra* note 6, at 129 (emphasis added).

crime, and collateral forms of self-imposed austerity. A good theory of repentance should account for these phenomena.

Such a theory of repentance would explain how moral stains may be expiated. Still, such a theory would require much more of the individual than mere regret and a successful resolution to do better in the future. Thus, while moral stains would not be strictly speaking permanent, they would possess a durability (and an apparent permanence) sufficient to account for the melancholy feeling of self-loss associated with small ethical infringements. As for the content of such a theory of repentance, the matter is beyond the scope of this paper.

C. Summary

The object of this paper has been to explain scrupulousness. More specifically, I set out to answer the question: why is it that minor ethical infringements can occasion so much anxiety after the act? My answer is that scrupulousness is anxiety over moral staining. But what is moral staining? Korsgaard propounds that personal or practical identity is constructed by our actions. Thus, immoral actions become a part of who one is. On Korsgaard's theory, you literally construct yourself via your actions. Thus, the staining metaphor captures the effect of bad actions on the self.

If you keep Korsgaard's theory of self-constitution in mind, it is understandable for a person to fret about the effect unethical actions have on who she is. In short, unethical actions cannot be written off as past mistakes but follow you into the future because they form a part of you. When someone like Emily worries that she has *already* done wrong, her desire to know whether or not this is true of her (that she has stained

herself) drives her to conduct the exercises in applied ethics that we see driving her to distraction. As I said however, this does not completely explain scrupulousness because it does not account for the lack of proportionality between the size of the ethical errors and the harried nerves of the scrupulous individual. There are two reasons small ethical slips take on such outsized significance for the scrupulous person. The first is that they reveal the fragility of your personal identity so that you face painful questions about who you really are “deep down.” The second is that moral lapses, however small, still leave permanent black marks. This inspires a melancholy sense of loss akin to that felt when a vase is chipped. Just as you may be touched with sorrow at the thought that the vase can never be the same again, you may feel a like sorrow at the fact that an unethical action has permanently altered you.

V. Postscript

A. Is Scrupulousness Justified?

The explanation I have given of scrupulousness should not be considered as a justification. On the contrary, my position is that it is a dysfunctional and unhealthy psychological phenomenon: the nervousness of the scrupulous person is a source of discontent and mental anguish; her characteristic back-and-forth casuistry is a distraction from other concerns, moral and non-moral, with a claim to her attention; and the intractability of the scrupulous person's internal moral debate witnesses to the casuistry's ineffectiveness as a source of correct moral understanding.

The faults of scrupulousness are illustrated by considering alternatives to indulging scrupulous worry. For example, the scrupulous person could learn to recognize the characteristic cycle of casuistic thoughts as unhelpful. To escape the cycle, she could seek emotional distance from her actions by asking how she would judge the same behavior in others. If she nonetheless finds herself stuck in a casuistic loop, she could also discuss her problem with someone she trusts and whose judgment she respects. As mentioned previously, part of what traps the scrupulous person is the distrust she has for herself as someone sitting in judgment of her own cause. Thus, when her harried thoughts settle briefly on a finding of innocence, she is driven away from this conclusion by the thought that she is being too soft on herself. By turning to another person, she receives answers from someone whose judgment she has no such reason to distrust and who can think calmly and clearly about the issue.

In response, it might be said that treating scrupulousness as pathology or vice is inconsistent with what I claimed about the importance that small ethical misdeeds take on when they are viewed as moral stains. While it may be true that a moral stain is something significant, no matter how small, it does not follow that you ought to obsessively investigate whenever you suspect you may have committed some minor peccadillo. There is still a reason to demand proportionality in your response to ethical ambiguity and to stop short of excessive means to resolve it.

As already established, it is doubtful that frantically reviewing the problem, over and over, is actually an operative way to discover the moral truth of the matter. Yet even if it were effective, it would still be preferable to avoid the psychological pain and distraction by either erring on the side of finding a violation against oneself or abandoning the search for a resolution. In doing so, one need not be unmindful of the significance of small moral stains. Quite the contrary, one should recognize that apart from the minor violation now self-alleged, one has committed a plethora of other misdeeds of various magnitudes. Attention to this fact teaches several practical lessons on the folly of scrupulous worry.

First, given that one has plenty of other misdeeds to atone for, obsessing over a single suspect action so as to know whether one has something to atone for is rather senseless. Second, where contemplated atonement takes the form of supererogatory deeds, it must be remembered that these are worthwhile in their own right and are certainly not wasted even if one has no moral stains to expiate. Third, confessing what one did, while sometimes embarrassing or hazardous, may be enough repentance to put

the matter to rest, with or without reaching a final moral verdict. Lastly, even if atonement is impossible, it is silly to pay undue attention to one *possible* crime amidst the many other ethical violations one has incurred. There are too many other obvious cracks in one's vase to make much fuss over another small one that might not actually exist.

If a philosopher held an Aristotelian view of character, it would be natural for her to understand scrupulousness as a vice of excess. The corresponding intermediate virtue, embodying an appropriately temperate level of concern for moral staining, could be called "conscientiousness." As a virtue, conscientiousness reflects the fact that guilt, understood as moral staining, does justify a moderate amount of inquiry in the aftermath of a moral ambiguous choice. For purposes of atonement, repentance, and self-examination, the potential existence of a moral stain left by a past action of uncertain moral quality is worth investigating.

It cannot be said, however, that the obsessive, disproportionate attention paid by the scrupulous individual to morally ambiguous but petty choices is thereby justified. Unlike the scrupulous person, the conscientious person has a healthy quantum of concern for moral staining. His rumination is correspondingly moderate where the scrupulous person's is extreme. When faced with minor moral ambiguity in his past, he does not fret ceaselessly or allow himself to be caught in a casuistic cycle. He does not dwell on a particular, minor moral ambiguity for days, weeks, or months on end. Rather than fall into a casuistic cycle, he adopts the alternatives to scrupulous worry considered above such as confessing, seeking the judgment of others, and undertaking supererogatory acts mindful of their inherent value, regardless of any need for atonement. The conscientious

person is distinguished by his being a good pupil of the virtue ethicists: he neither worries too much nor too little about the ethics of an ambiguous choice.

1. The Merits of Scrupulousness as a Character Trait

Although I take the prior section to be a fatal indictment of scrupulousness, further exploration of its merits yields some interesting, contrasting results on the value of moral worry to functioning as a moral agent. On the one hand, being scrupulous may make one a kind of moral coward, the kind of person who shies away from ethically ambiguous situations to avoid the anticipated pain of scrupulous doubt in the aftermath. On the other hand, care in avoiding moral gray areas might result in an overall improvement in one's conduct.

To see how scrupulousness could engender moral cowardice, consider the case of a young doctor who is about to complete her training. Part of her wishes to continue practicing in the inner city hospital where she has been serving as a resident. At the same time, she possesses the talent and inclination to take up an offered fellowship in medical research. Weighing her options, the fledgling doctor knows from experience that the demanding, chaotic work of the underresourced hospital has often placed her in circumstances where she suspects herself of small professional sins. For instance, she finds herself questioning whether her desire for sleep at the end of a twelve-hour shift overbore her professional obligations when she left work three minutes early instead of treating one more patient. Whereas other, non-scrupulous doctors would never give the matter a second thought, these situations frequently leave our young doctor struggling for weeks after over the morality of her choices: she finds herself questioning whether she

did “all she could have done” or rather all she “ought to have done.” On the other side of the fence, a daily life of academic speculation and experiments promises few occasions to precipitate scrupulous second-guessing.

Suppose now that when she makes her decision, it is the expectation of scrupulous suffering that makes the difference in her choice of the research fellowship. Though she is otherwise convinced that continuing to act as physician to the underserved would be the better course (we may even allow that it *is* the better choice), her fear of the chronic moral doubt and anxiety to be found on a path fraught with moral ambiguity steers her aside. Alternatively, we could imagine that her trepidation influences her decision-making at an earlier stage: before she made her decision, her fear may have caused her, gradually and unconsciously, to exclude remaining at the hospital as a live option.

Though the word “coward” is perhaps unduly shaming, we might call the physician’s condition in either case “moral cowardice” on an analogy to archetypal physical cowardice. As I have argued, the scrupulous person’s worries are explained by anxiety over moral staining. It is thus inappropriate fear of “moral injury” that ultimately steers the moral coward away from moral ambiguity, just as the physical coward’s undue fear of bruises or broken bones keeps her from snow skiing or serving as a firefighter.

I take the fear of moral injury to be inappropriate because it is, at best, only a minor reason. Were it given much weight as a reason, the best course for an agent would too often be one of passivity, e.g., “stay at home where you can’t sin.” In the case at hand, I assume that the risk to one’s own moral purity *ceteris paribus* cannot outweigh the good to be done by the physician in the inner city hospital.

The idea of moral cowardice notwithstanding, it is possible to paint the moral worry of the scrupulous person in a positive light. In some cases, avoidance of moral ambiguity looks like a good habit.³¹ Consider the case of our student Emily. Having suffered from scrupulous doubt as a result of her unintended glance at the geography book stuffed into her backpack, she will be more careful in the future to keep her textbooks well out of sight before a test begins. By thus avoiding moral ambiguity, Emily dodges making difficult, close moral judgments. The ultimate result is that Emily improves her odds of maintaining a record of right conduct.

In a similar vein, Ruth Barcan Marcus has argued that agents ought to arrange their affairs to avoid moral dilemmas.³² In her essay, “Moral Dilemmas and Consistency,” Marcus argues that there are real moral dilemmas, cases when two genuine categorical principles demand of a given agent, in a given circumstance, mutually exclusive actions.³³ Marcus’ approach is to contend that the principles involved are nonetheless consistent, where consistency is understood in terms of the existence of a possible world in which both principles may be fulfilled without contradiction.³⁴ To

³¹ Thanks are due to Danielle Wolfson, Law & Philosophy student at the University of Texas for offering this angle.

³² Ruth Barcan Marcus, *Moral Dilemmas and Consistency*, 77 J. PHIL. 121, 121 (1980).

³³ *Id.* at 122, 127.

³⁴ *Id.* at 128. To illustrate her model, Marcus describes a card game that uses two potentially contradictory rules (black trumps red, high trumps low). *Id.* In some percentage of shuffles, conflicts between the two rules will arise in the course of play (I play a black queen, you play a red king). There are however some shuffles where the conflict will never arise (all black cards played are also higher than their red comparators). This latter possibility renders the game consistent in Marcus’ sense. Corresponding consistency in the world of morality entails that there are *at least some possible worlds* in which a set of moral principles can be rigidly observed without encountering contradiction, i.e., obeying one never excludes obedience to another. *Id.*

borrow a familiar example, the principle prohibiting lying comes into conflict with the duty of benevolence when a Gestapo agent asks a heroic householder whether he is hiding Jewish refugees in his cellar. The principles are nevertheless consistent per Marcus because there are other possible worlds in which the dilemma never arises (a blessed world in which the Gestapo never exists comes to mind).

The practical lesson Marcus asks us to take from her paper is that we should arrange our lives (“stack the deck”) so as to avoid moral dilemmas.³⁵ The guilt we feel after choosing one horn of a dilemma over another serves an important function: it reminds us to make an effort in the future to avoid the dilemma in the first place.³⁶ Though Marcus was addressing cases in which two moral principles point at contradictory actions, her point can be applied to situations of moral ambiguity as well. On this model, the scrupulous worries that Emily experiences are a useful goad to avoiding ethically ambiguous situations in the future. In this way, Emily will do a better job of conforming her conduct to morality.

The above shows that scrupulousness can sometimes have good consequences and sometimes have bad consequences for the moral behavior of those afflicted with it. What conclusions then can be drawn from these divergent cases? The short answer is that scrupulousness is performing a valuable task in one case but exercising inordinate influence in the other. On the positive side, Emily’s case reveals that scrupulousness can give those afflicted with it a kind of internal alarm that is alert to moral ambiguity. Given her fear of scrupulous doubts in the aftermath of a morally ambiguous decision, Emily is

³⁵ *Id.* at 130.

³⁶ *Id.* at 131.

attentive to such situations. This is in itself salutary because it is helpful for a moral agent to have notice of those morally grey circumstances that call for her attention and care, both so that she may avoid them when appropriate and so that she may recognize them and deliberate when they are upon her. The alarm that scrupulousness raises is, however, not simply an alert but also a screeching disincentive to encounter with moral ambiguity.

It is as a disincentive that the metaphorical moral alarm distorts the choices of the young doctor. By psychological brute force, it infringes on her judgment as to the normative-ethical merits of her situation. Its proper place can only be to warn, but it serves instead to discourage. The moral alarm here may be compared to an alert that a ledge is nearby. While such an alarm can usefully warn you of the existence of the ledge, it cannot tell you which side is secure ground. In moral terms, knowing that there is moral ambiguity in the vicinity does not instruct you as to which of several courses of action to take.

Consider as well alarms that point towards one course of action but fail to give you reasons for it. The beeping noise that today's cars make when the driver is not wearing a seat belt can usefully remind and spur you to put on your seat belt. It cannot, however, furnish much of a reason to fasten your seat belt. There are good, powerful reasons to put on your seat belt, but they have to do with safety and not with irritating sounds (After all, the sound alone furnishes equal reason to exercise mechanical ingenuity in disabling it!). In like manner, the strident moral alarm that scrupulousness imbues one with does not furnish one with good reasons to avoid moral ambiguity. Putting the point more concretely, the fear of scrupulous doubt experienced by the doctor

(her alert to the prospect of encountering moral ambiguity in the hospital job) is not itself a significant reason for or against taking the research job as opposed to the hospital job. As we saw, however, it had a decisive impact on her decision making process, and a decision that should have been made on the normative-ethical merits (the good and bad of taking one job over the other) was instead decided by a fear that was itself blind to those merits. In sum, the alarm was treated as a reason to avoid moral ambiguity altogether when its correct role could only be to alert.

To conclude, while scrupulousness may sometimes have a positive result (greater moral caution), the caution it engenders is not reliably calculated to help an agent respond correctly to moral ambiguity. On the contrary, fear of anticipated scrupulous suffering is apt to interfere unreasonably with an agent's decision making.

As a final note, it is curious that even though scrupulousness is a vice, it is nonetheless a vice of the virtuous. Both our imaginary doctor and our student Emily are people who care a great deal about doing the right thing. It is only because concern for poor patients looms so large in the mind of the doctor that she is confronted with the choice between the nerve-wracking hospital work and the research fellowship. A more selfish doctor would certainly exclude the former in favor of the profits of private practice! Emily, similarly, must care a great deal about honesty and academic integrity to even question the morality of answering a test question after a revealing, inadvertent glance at her study materials. Remarkably, scrupulousness appears in a double guise, a vice in its own right but a mark of virtue as well.

B. The Subject's Philosophical Interest

1. Moral Staining as a Secular Theory of Sin

I want to close with an argument for why philosophers should be interested in scrupulousness and in anxiety over moral staining as the explanation for it. In brief, scrupulousness is of philosophical interest because studying it makes salient a neglected³⁷ aspect of guilt, viz., guilt understood as an enduring blot on the individual. This facet of guilt is prominent in Christianity where it is encompassed by the word “sin.”³⁸ Each misdeed is a sin, and each sin is a burden that accumulates. Per orthodoxy, it is only through divine grace that this weight can be discharged. In this context, metaphors of ablution and cleansing abound. As Biblical scholar Gary Anderson recognizes, “To speak in this fashion is to assume that sin is much more than a violation of a moral norm and that the effects of sin are more extensive than a guilty conscience.”³⁹ The *something more* that Anderson associates with sin is reminiscent of moral staining, as his explanation of it attests:

³⁷ I do know of at least one philosopher who has analyzed guilt in terms of staining. In her book, *Pride, Shame, and Guilt*, Gabriele Taylor declares, “Guilt is a burden he [the guilty person] has to carry, he cannot disown it, it must leave its mark upon him.” TAYLOR, *supra* note 24, at 92. She later writes, “But when feeling guilty I think of myself as having brought about a forbidden state of affairs and thereby in this respect *disfigured a self* which otherwise remains the same. *Id.* (emphasis added). Importantly, Taylor’s choice of words is not a matter of idle, unconsidered metaphor for it figures actively in her subsequent theorizing. She writes, “The painfulness of the guilt feelings is therefore explained as the uneasiness the person concerned feels about her self. . . . That, in the agent’s view, reparation is required is due to her conception of herself as disfigured and the consequent need to do something about it.” *Id.* at 98.

³⁸ I do not mean this sentence to be definitional or exhaustive. For one thing, the word “sin” describes an offense, not simply against morality, but against God. I use the word because I think it familiarly expresses the idea of guilt as stain, which I contend is prominent in Christianity but not exclusive to it.

³⁹ GARY A. ANDERSON, SIN: A HISTORY 3 (2009).

It would not be inaccurate to say that committing a serious sin triggers the creation of some sort of thing. In the case under consideration, a stain is spontaneously generated once the fateful act has been accomplished. Once this stain has appeared, it cannot be simply brushed aside. Even contemporary secular speech retains a sense of this when it refers to a guilty person bearing the consequences of an act on his or her shoulders. . . .

Sin is not just a thing, however, but a particular kind of thing. When one sins, something concrete happens: one's hands may become stained, one's back may become burdened, or one may fall into debt. And the verbal expressions that render the idea of forgiveness follow suit: stained hands are *cleansed*, burdens are *lifted*, and debts are either *paid off* or *remitted*. It is as though a stain, weight, or bond of indebtedness is created *ex nihilo* when one offends against God. And that thing that sin has created will continue to haunt the offenders until it has been engaged and dealt with.⁴⁰

As I hope this paper has demonstrated however, the idea of guilt as moral staining is not inextricably intertwined with religion. Consider Hemingway's character Anselmo from *For Whom the Bell Tolls*. Although a guerrilla of the Republican side (and concomitantly someone who has renounced the Catholic faith), Anselmo still believes penance and atonement will be necessary for the killing he and others have done during the civil war:

All that I am sorry for is the killing. But surely there will be an opportunity to atone for that because for a sin of that sort that so many bear, certainly some just relief will be devised. . . .

I wish I did not think about it so much, he thought. I wish there were a penance for it that one could commence now because it is the only thing that I have done in all my life that makes me feel badly when I am alone. All the other things are forgiven or one had a chance to atone for them by kindness or in some decent way. But I think that this of the killing must be a very great sin and I would like to fix it up. Later on there may be certain days that one can work for the state or something that one can do that will remove it. It will probably be something that one pays as in the days of the Church, he thought, and smiled. The Church was well organized for sin.

⁴⁰ *Id.* at 4.

That pleased him and he was smiling in the dark when Robert Jordan came up to him.⁴¹

I mean for the above examples, both secular and religious, to demonstrate that moral staining is a part of the phenomenology of guilt. Consequently, a secular notion of sin can and should be explored by philosophical ethicists. Scrupulousness, as a special case of guilt, focuses our attention on this aspect of a guilty person's experience. My adaptation of Korsgaard's work, in turn, shows how one could make metaphysical sense of the idea of a moral stain.

2. Two Theories of Guilt

Guilt understood as a moral stain is both distinct from and has advantages over another, more prevalent view of guilt—that of guilt as consisting in the rupturing of valued relationships with others.⁴² I compare the two to show that the staining view is unique and that it accurately captures the phenomenology of guilt as a reflexive, inward phenomenon. The version of the severance view I transmit is that of Herbert Morris.

On the severance view, the “concept of wrongdoing” is connected with the concept of “being joined together with another or others, the idea of union.”⁴³ In this union, “one is complete, one is whole, in a way that one would not be without it.”⁴⁴ Wrongdoing (when yoked with fault) embodies the severance of these connections.⁴⁵

⁴¹ ERNEST HEMINGWAY, *FOR WHOM THE BELL TOLLS* 206 (Arrow Books 2004) (1941).

⁴² Herbert Morris propounds a prominent version of this approach in his essay “Guilt and Suffering.” HERBERT MORRIS, *Guilt and Suffering*, in *ON GUILT AND INNOCENCE*, 89, 96–97 (1976).

⁴³ *Id.* at 96.

⁴⁴ *Id.*

⁴⁵ *Id.* (“When one is guilty of wrongdoing, one separates oneself from another or others with whom one was joined.”).

Given that one's own integrity is dependent on these connections with others, their severance also entails a painful self-sundering.

The severance view emphasizes that ideas about wrongdoing exist side-by-side with notions of restoration.⁴⁶ Thus, practices such as “receiving forgiveness, making sacrifices, reparation, and punishment” are significant as “rite[s] of passage back to union.”⁴⁷ These are importantly *rites of passage* because they accomplish what mere forgetting does not: “For restoration there must be a bringing back by certain appropriate responses which carry significance for the parties.”⁴⁸ This is because, “A wrong . . . is not understood as righted when matters are simply where they were before the wrong”⁴⁹

Like guilt as moral staining, guilt as estrangement distinguishes between guilt and guilt feeling.⁵⁰ I agree with separating the two. One can be guilty without feeling guilty, perhaps because one does not believe oneself to be guilty. More typically, one believes oneself to be guilty (because one is guilty) and consequently feels guilty. Of course, if you believe you are guilty, you might also feel guilty, regardless of whether or not you are in fact guilty. Per other permutations, one can feel guilty without believing oneself to be guilty, both when one is, and when one is not, in fact, guilty.

These combinations aside, differentiating feeling guilty and being guilty is significant because it allows one to recognize what Martin Buber called guilt's “ontic

⁴⁶ *Id.* at 96–97.

⁴⁷ *Id.* at 96.

⁴⁸ *Id.* at 97.

⁴⁹ *Id.* at 97.

⁵⁰ *See id.* at 89, 98–99.

character” as something “whose place is not the soul but being.”⁵¹ Both the severance and the staining views recognize guilt’s ontic character. Where guilt as estrangement differs from guilt as moral staining is in the nature of that something “whose place is . . . being.” Per the severance view, it consists in the real rupturing of relationships with others, relationships that themselves were crucial to the unity of the offending individual. Per this paper, it derives from the fact that actions are self-constitutive, such that immoral actions form a part of you and leave you persistently tarnished.

Guilt as moral staining contrasts favorably with the estrangement view in at least one meaningful respect. To wit, moral staining better represents the self-concerned, self-occupied character of guilt. This quality of guilt is well-captured in the work of Gabriele Taylor on distinguishing guilt from remorse. Taylor, who also propounds a view of guilt as self-disfigurement, distinguishes guilt from remorse by focusing her attention on the guilty individual’s preoccupation with the removal of the burden of guilt he bears in contradistinction to the remorseful person’s concern with remedying or recompensing a wrong done to others. Viewed in this light, guilt as estrangement mistakenly emphasizes severing of relationships and the urge to repair them, matters more typical (if we believe Taylor) of remorse than guilt.

Taylor writes of remorse: “The thought in remorse . . . concentrates on the deed rather than on the agent as he who has done the deed.”⁵² Remorse then is like *regret* for they both involve something ill which has come to pass, the occurrence of which is

⁵¹ Martin Buber, *Guilt and Guilt Feelings*, in *GUILT AND SHAME* 58, 60 (Herbert Morris ed., 1971).

⁵² TAYLOR, *supra* note 24, at 98.

bemoaned or lamented. Remorse differs from regret though in that the former is “always felt about an event which the agent sees as an action of hers.”⁵³ While much regret is idle regret, remorse carries with it an expectation that the remorseful person will try to right the wrong they have done.⁵⁴ Taylor explains, “The person feeling remorse is tied to her action as the person feeling regret is not. She must do something about it, or it will continue to worry her.”⁵⁵

Although the person feeling remorse “is tied to her action,” her concentration is still on the harm she has done, not on herself. Taylor writes, “Remorse is not an emotion of self-assessment, the concentration of thought here is not on the self, on its disfigurement or lowly standing, but is on her actions and their consequences.”⁵⁶ The implication is that guilt, by contrast, is an emotion of self-assessment:

[E]ven where the person feeling guilt believes that she has harmed another and believes that she should now repair this damage, her thoughts are not primarily on this aspect of the situation, they are primarily on herself. In this sense, too, the thought of damage caused and so to be repaired is inessential. In feeling remorse, on the other hand, it is precisely these thoughts which are the agent’s identificatory beliefs, i.e., when feeling remorse the agent believes that she has done harm which she ought to try and repair.⁵⁷

Taylor’s differentiation of guilt and remorse is incongruent with the severance theory, since according to Taylor, an emphasis on outward harm (e.g., broken relationships) is characteristic of, not guilt, but remorse. Compare the prior indented quote from Taylor with Morris’ conclusion about guilt:

⁵³ *Id.*

⁵⁴ *Id.* at 99.

⁵⁵ *Id.*

⁵⁶ *Id.* at 99–100 (emphasis added).

⁵⁷ *Id.* at 104.

The central, though not the only, case of being guilty of wrongdoing is one in which one is both at fault and responsible for wrongdoing and thus is separated from others, obligated to them, and deserving of some hostile response from them. I say this case is central, for I believe that the concept is employed here with its full panoply of associated concepts, concepts such as being guilty before another or others, asking for and gaining forgiveness, and *mending what has been broken*.⁵⁸

As I believe Taylor has shown, emphasis on broken relationships is misplaced in a theory of guilt. The urge to repair the harm done is typical of remorse, not guilt.

The reflexive turn in guilt is also visible in the phenomenon of guilt over harmless and unnoticed misdeeds. Situations in which one acts immorally, but the wrong is both undetected and innocuous, lend themselves better to the moral staining view of guilt than to the rupturing of relationships theory. The action of our scrupulous student Emily is one example of this genus of misdeeds. Suppose for a moment that what Emily did was in fact cheating and was in fact immoral. Still, she only cheated on one question of a high school geography exam, hardly a great injury or breach of faith with her teachers and classmates. The consequences of her action, the difference between earning an “A-” or an ill-gotten “A” on the exam, hardly seem worthy of remorse. And yet, if Emily truly did cheat, then she nonetheless has done something immoral and is guilty.

Other examples may be produced. If envy is in fact immoral, then a person who resents his friend’s promotion has done something unethical, albeit only internally. We could also add unnoticed white lies or failed, unseen attempts to injure one’s fellows. In another example, an ethical vegetarian is tempted to eat some leftover hamburger sitting in the family refrigerator. If he eats the surplus vittles, no harm will be done to an animal

⁵⁸ MORRIS, *supra* note 42, at 98 (emphasis added).

and no encouragement given to animal slaughter. Nonetheless, the ethical vegetarian may feel guilty (and arguably is guilty) after eating the leftover flesh. For all these cases, there is no apparent object of remorse, but there is nonetheless guilt.

The protagonist of Robert Coover's novel *The Universal Baseball Association* is a particularly colorful example. The character is an accountant who in his spare time plays a game of his own invention, the eponymous Universal Baseball Association. It is a private form of fantasy baseball, in which players pitch and hit and teams win or lose according to elaborate rules befitting the man's mathematical profession. When the rules of the game dictate that his favorite player "die," the protagonist is thrown into a crisis. "Cheating" and letting the player live brings on feelings of guilt. Though we may question whether feelings of guilt are appropriate for the protagonist (i.e., whether anything immoral has actually been done), the example nonetheless highlights the inward looking, reflexive character of guilt.

Admittedly, the severance view possesses a means to account for these examples of guilt that is not other regarding. In his essay, Morris expressly recognizes that thoughts, which do not injure others, may nonetheless make one guilty. He says of such thoughts:

While conduct that is injurious to others is central to the concept of wrongdoing, it is important to note that certain relationships can be damaged by an individual's having a certain state of mind alone, a state incompatible with the relationship as it may be defined and valued. An intention to do an act that would betray a friend, for example, is itself a state that damages the relationship between friends.⁵⁹

⁵⁹ *Id.* at 97.

Thus armed, the severance view can attempt to account for the cases canvassed above in which guilt is present but harm is not. By telling a white lie, one fails to treat one's spouse with respect (one condescends by hiding the truth), and without respect, the relationship is compromised. Likewise, when one feels envy towards one's friend or secrets plots to harm her, the friendship is poisoned: the bond is broken even though only one side is aware of it.

In responding to cases of unseen, unfelt wrongs however, the theory of guilt as the severance of relationships must strain and become unintuitive. For example, to account for guilt in Emily the test-taker,⁶⁰ one would need a story either about trust or about a communal practice—e.g., academic achievement or competition—that loses its significance for Emily once she cheats. By failing the trust or subverting the practice, Emily would be cut-off from the corresponding community. Although this is a plausible account of how someone like Emily *might* experience guilt if she was invested in the relevant communal values, it fails to account for cases in which Emily cares little for grades and academics but nonetheless believes that cheating is wrong, perhaps because it is a species of dishonesty. In these latter cases, it is hard to imagine the severance view agreeing with the phenomenology of Emily's guilty mind.

Perhaps the reason that the severance theory has difficulty accounting for harmless guilty deeds is that it takes "conduct that is injurious to others [to be] central to

⁶⁰ I still take it that the morality of Emily's situation is non-obvious and indeed do not myself know whether her choice to write Kyrgyzstan was right or wrong. Here though, I assume it was wrong to make the present point against the severance view.

the concept of wrongdoing.”⁶¹ In the alternative, we might say as Taylor does, that it is sufficient to be guilty to have violated a law or command.⁶² The violation of a law is distinct from whatever harm that violation may or may not have caused.⁶³ “[T]he person who feels guilty thinks in terms of duties not performed and obligations not fulfilled.”⁶⁴ She need not think in terms of harm caused. Contra the severance view, harm to others is not central to guilt. Rather, the notion of a violation of a command or obligation is essential and salient.

Unlike a theory of guilt as the severance of relationships, guilt as moral staining need not strain itself to account for guilt arising from mere breach of moral obligation. On the contrary, a hidden, innocuous violation of moral law is an action of the individual that stains the self, regardless of the consequences for others or for one’s unity with the community. The wrong done may have passed completely unseen or even have produced good results in the world, but for the individual facing herself in her own thoughts, there remains the fact of having chosen an immoral action that remains a part of her.

3. Summary

The goal of this section has been to recommend moral staining as a theory of guilt. I have chiefly championed it for matching the phenomenology of guilt. In this regard, I believe it compares favorably with Morris’ severance theory as it accurately

⁶¹ *Id.* at 97.

⁶² TAYLOR, *supra* note 24, at 85. In truth, Morris does say that wrongdoing entails the “conception of some limit on conduct.” MORRIS, *supra* note 42, at 94. He believes though that the idea of a limitation on conduct is derivative of concerns about harm to those things that are valued. *Id.* at 93–94. Hence, harm is still the primary concept defining wrongdoing for Morris.

⁶³ TAYLOR, *supra* note 24, at 86.

⁶⁴ *Id.* at 87.

treats guilt as an inward, self-directed phenomenon rather than an external harm-focused one. It also has much to recommend it as a “secular theory of sin,” reflecting the experience of guilt as a perduring *res* that lies behind the widespread religious concepts of sin and karma. Alongside the phenomenological discussion, I have more timidly adopted a metaphysical view. As I stated, I agree with Morris that guilt corresponds to something real in the world. This position was implicit from the beginning of the paper. I initially specified that a moral stain is not a mere relational property (the fact that at time *x* you performed action *y*) and excluded a character ethics interpretation. Instead, I characterized a moral stain as a real change in a person’s properties, and by adopting Korsgaard’s view that the self is continually constituted by one’s choices, sought to explain what such a property could be. Insofar as the reader is agreeably willing to assign ontic status to guilt, then moral staining (cashed out in Korsgaardian terms) has the merit of accounting for that ontic status. As for the reader who is unconvinced by these metaphysical claims, the theory of guilt as moral staining will hopefully commend itself nonetheless as a veracious piece of moral psychology.

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Vita

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